

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HUSBANDS FOR RENT, INC.,)
Plaintiff(s),) No. C04-1603 BZ
v.)
HANDY HUSBANDS FOR RENT,)
INC.,)
Defendants.)

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
ADJUDICATION OF
DEFENDANT'S AFFIRMATIVE
DEFENSE

On May 25, 2005, plaintiff Husbands for Rent, Inc. moved for summary adjudication on defendant's affirmative defense of prior use under California Business and Professions Code § 14342. Section 14342 states that "[n]o service mark ... registered pursuant to this chapter shall be enforced under the provisions of Section 14320, 14330, or 14340, or Section 350 of the Penal Code, against any party who has adopted and lawfully used the same or a confusingly similar service mark ... from a date prior to

the effective date of registration of the service mark . . . under this chapter." Cal. Bus. & Prof. Code § 14342 (emphasis added). Plaintiff's own evidence suggests that defendant's earliest use of the mark was in 2000, while plaintiff did not register the mark until 2002. Accordingly, **IT IS HEREBY ORDERED** that plaintiff's motion for summary adjudication with respect to defendant's affirmative defense of prior use under California Business and Professions Code § 14342 is **DENIED**.

Dated: June 21, 2005

/s/ Bernard Zimmerman
Bernard Zimmerman
United States Magistrate Judge

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